IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 282 of 1984

in

SPECIAL CIVIL APPLICATION No 1434 of 1977

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHCHANDRA N PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 282 of 1984

MR HM BHAGAT for Appellant No.

M/S A & D for Appellant No.

RULE UNSERVED for Respondent No. 1-2

MS SUDHA R GANGWAR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 08/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

The State of Gujarat and others, appellants, original respondents, have filed this appeal against judgement and decree dated 28.7.1983 passed by this Court in Special Civil Application No. 1434 of 1977. The learned Judge by his impugned judgement allowed the petition and held that the Resolution dated 4.2.1976 passed by the Government is of no effect till the Government amended the Gujarat Civil Services (Revision of Pay) Rules, 1975. The Court held that till the date the Government has not amended the Rules and they have acted in contravention of the Rules and they are not paying Rs. 50/- as Special Pay which is fixed by the legislature under the Rules.

2. The facts giving rise to this petition are as under:

2.1 Rameshchandra Narsibhai Patel, petitioner No. 1 and others were employees of the first respondent Gujarat State. They were working in the Education Service under the overall supervision and control of the respondent No. 2 and under the direct supervision and control of the respondent No. 3, District Education Officer, Ahmedabad, as Class III employees. The petitioners were originally working in the Grade of Rs. 160-370. The Government thereafter had appointed Sarela Pay Commission, which is known as the First Pay Commission. The Sarela Pay Commission had recommended upward revision of the said grade of Assistant Education Inspectors ("AEI" for short) to Rs. 250-460. The State Government accepted the recommendation of First Pay Commission and revised the then existing pay scale of AEIs to the grade of Rs. 250-420. The Government thereafter issued a Resolution dated 4.11.1971 revising the grade to Rs. 225-500 with special pay of Rs. 30/- per month with effect from 1.6.1967.

2.2 It is the case of the petitioner that thereafter the Government appointed Second Pay Commission popularly known as Desai Pay Commission. Desai Pay Commission in its report at page 92 observed as under:

"Administration Officer, Municipal School Board:
Assistant Education Inspector and Assistant

Education Inspector for Physical Education - (Rs. 225-500 plus Special Pay of Rs. 30/- per month)".

2.2A In para 40 of the report, ultimately the Commission did not recommend extra pay. However, pursuant to that Entry No. 88 which is on page 96 reads as follows:

Sr. No.	Designation	No. of Posts	Existing Scale of pay	Recommended Scale of pay	Remarks
1	2	3	4	5	6
88	Assistant Education Inspector Assistant Educational Inspector for Phsycial Education	214 pay of	225-500	440-750 + Special Rs. 50/- per month	

2.3 According to the petitioners, the Second Pay Commission recommended revised time scale of Rs. 440-750 with special pay of Rs. 50/- per month. The said recommendations of the Desai Pay Commission were accepted by the first respondent and statutory rules were issued by the Governor of Gujarat in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and these Rules were called "The Gujarat Civil Service (Revision of Pay) Rules, 1975". The said Rules deemed to have come into force with effect from 1.1.1973. According to the petitioners, under the said Rules under the heading "Directorate of Education", the Government had introduced Entry 88 as stated above.

2.4 It was the case of the petitioners that in view of the amendment, they were entitled to special pay of Rs. 50/- per month over and above their regular pay.

2.5 According to the petitioners, the third respondent passed order dated 6.2.1976 fixing the salary of the first petitioner accordingly and for one month the salary was accordingly given. It is the case of the petitioners that thereafter, the Government had issued a Resolution dated 4.2.1976 by which it was decided that the existing entry at serial No. 88 the following entry relating to Special Pay shown against the post of Assistant Education Inspector and Assistant Educational Inspector - for physical Education in Column 4 of the

Schedule appended to the Gujarat Civil Services (Revision of Pay) Rules, 1975 shall be deleted:

"Special Pay of RS. 50/- per month"

2.6 These orders take effect from 1.1.1973. Necessary amendment to the Gujarat Civil Services (Revision of Pay) Rules, 1975 will be issued in due course.

2.7 In view of the aforesaid Resolution, the Government did not pay the amount of special pay of Rs. 50/- per month. In fact, the Government issued communication which is produced at Annexure-D by which the Government has decided not to pay Rs. 50/- as special pay and also decided to recover special pay of Rs. 50/which has been paid in February, 1976.

3. Being aggrieved and dissatisfied with the said action of the Government, the petitioners filed Special Civil Application No. 1434 of 1977 before this Court somewhere in September, 1977, for quashing and setting aside the impugned Resolution dated 4.2.1976 contemplating the action of effecting recovery and withholding the special pay, passed by the third respondent by which the Government decided to withdraw the special pay which is produced at Annexure-D to the petition.

3.1 In response to the aforesaid petition, the State of Gujarat filed affidavit-in-reply of Mr. V.S. Shah, Section Officer, Education Department, somewhere in November, 1977. In the said affidavit, the contention of the petitioner is denied that Desai Pay Commission had recommended special pay of Rs. 50/- per month. It is stated that the action of the Government is right in view of the Resolution dated 4.2.1976 passed in this regard by which the Government has decided to delete entry No. 88 relating to special pay of Rs. 50/- per month.

3.2. When the matter reached hearing before this Court somewhere in July, 1983 the learned Single Judge after going through the facts of the case, which we have set out earlier, held that as the petitioners were required to move from place to place and inspect various schools in the area, they were entitled to special pay of Rs. 50/- per month. It was further held by the learned Single Judge that in this case originally the petitioners were given special pay of Rs. 50/- per month as per the Gujarat Civil Services (Revision of Pay) Rules, 1975 whereas now the Government has decided to delete entry

No. 88 by the executive act by passing Resolution dated 4.2.1976. It was held that executive has no power to interfere with the powers of the legislature. Therefore, it was held that till the date the Government has not amended the Rules and yet the Government has acted in contravention of the Rules and they are not paying Rs. 50/- as special pay which is fixed by the legislature under the Rules. In view of the same, the petition was allowed.

4. Being aggrieved and dissatisfied with the aforesaid judgement and order of the learned Single Judge, State of Gujarat, appellant, has filed this Letters Patent Appeal somewhere in April 1984.

4.1 Mr. M.S. Rao, learned A.G.P. appears on behalf of the State Government. He has invited our attention to the affidavit and the reasoning given by the learned Single Judge. He has stated that in its exercise of power conferred by the proviso to Article 309 of the Constitution of India, the Governor of Gujarat has further amended the Gujarat Civil Services (Revision of Pay) Rules, 1975 which are known as Gujarat Civil Services (Revision of Pay) (4th Amendment) Rules, 1982. These Rules shall be deemed to have come into force on and with effect from the 1st day of January, 1973. The learned A.G.P. has invited our attention to column 5 of amended Rules which read as follows:

"(5) In the entry at Sr. No. 88 in Column 4 the words and figures "Special Pay of Rs. 50/- per month" shall be deleted."

4.2 The learned A.G.P. therefore submitted that it is no doubt true that the Government had initially provided for special pay of Rs. 50/- per month as per entry 88 in the original Rules but in 1982 when the Government decided to delete the said entry with retrospective effect from 1973 and therefore the petitioners were not entitled to special pay. He stated that pursuant to the Resolution the Government has amended the Rules and the action of the Government in not paying special pay of Rs. 50/- per month was perfectly justified. The same has legislative support. He stated that the reasoning given by the learned Single Judge that the Government could not have done so in absence of amendment in the Rules was not correct. He has stated that the Government has amended the Rules in 1982 whereas the judgement was rendered in 1983. Unfortunately, at the time of hearing of the petition, the Court's attention was not invited to the said amended Rules and

therefore the said judgement was delivered by the learned Single Judge. However, once the Rules have already been amended, full legal effect will have to be given to such amendment.

5. We have considered the contention of the petitioners. We have also considered the contentions of the learned A.G.P. We have also gone through the amended Rules. We have also considered the judgement of the learned Single Judge. The entire basis of the order of the learned Single Judge was that the Government cannot pass any executive order without amendment in the Rules. However, unfortunately, attention of the learned Single Judge was not invited to the amended Rules. It may be noted that the amended Rules came into force on 25.8.1982 and the learned Single Judge has delivered the judgement on 28.7.1983. Therefore, in our considered view, in view of the amended Rules, the action of the Government in not paying special pay of Rs. 50/- per month is perfectly legal, valid and just. Therefore, the grievance of the petitioners does not survive.

6. In the result, the appeal is allowed. The order of the learned Single Judge in Special Civil Application No. 1434 of 1977 dated 28.7.1983 is set aside. No order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)
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